

ORDINANCE NO. _____

**AN ORDINANCE of the City of Pasco, Washington,
Amending Ordinance No. 4413; and Amending PMC 15.10.025
“Supplemental Definitions” Providing for Corrections**

WHEREAS, the City having adopted Ordinance No. 4413 to facilitate the implementation of broadband services within the City; and

WHEREAS, the enactment of Ordinance No. 4413 was done in haste to meet the Federal Communications Declaratory Ruling and Order effective on January 14, 2019; and

WHEREAS, since its adoption, corrections and other minor changes have been identified to clarify the application of this Ordinance. NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON, DO ORDAIN
AS FOLLOWS:**

Section 1. That Section 15.10.025 entitled “Supplemental Definitions” of the Pasco Municipal Code shall be amended and shall read as follows:

15.10.025 SUPPLEMENTAL DEFINITIONS. Supplemental to those definitions provided in PMC Section 15.10.020, and particularly in relation to those actions covered by PMC 15.100 “Small Cell Tower Deployment - - Right-of-Way”, and PMC 15.105 “Small Cell Tower Deployment - - Non Right-of-Way Location”, shall have the following meanings.

A) “Administrative review” means ministerial review of an application by the City Manager, or his designee, relating to the review and issuance of a permit, including review by the Community Development Director and Public Works Director, ~~and Information Services Director~~ to determine whether the issuance of a permit is in conformity with the applicable provisions of this Title. This review does not involve the exercise of discretion, nor is subject to a public hearing.

B) “Antenna” means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of wireless services or other wireless communications. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

C) “Applicable codes” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the City or otherwise are applicable in the jurisdiction.

D) “Applicant” means any person who submits an application.

E) “Application” means a written request submitted by an applicant to City for a permit to:

- 1) Locate or collocate, or to modify, a communications facility underground, on the surface, or on any existing support structure, pole or tower; or
- 2) Construct, replace, or modify a new support pole or tower or any other structure on which a communications facility will be collocated.

F) “Authority” or “City” means the City of Pasco, Washington, and all departments, divisions, employees and agencies thereof.

G) “Authority pole” or “City pole” means a pole owned, regulated, managed, or operated by or on behalf of the City, however, nothing construed can grant authority for the use or location of communication facilities upon a pole owned by the Franklin County Public Utility District.

H) “Base station” or “Wireless facility” is defined as provided below (definition of “Wireless Facility”).

I) “Collocate” means to install, mount, maintain, modify, operate and/or replace a communications facility on an existing support structure, pole, or tower or any other structure capable of supporting such communications facility. ~~Collocation has a corresponding meaning.~~ The term does not include the installation of a new utility pole, tower, or support structure in the public right-of-way.

J) “Communications facility” means, collectively, the equipment at a fixed location or locations that enables communications between user equipment and a communications network, including:

- 1) Radio transceivers, antennas, coaxial, fiber-optic, or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and
- 2) All other equipment associated with any of the foregoing.

Communications facility does not include the pole, tower, or support structure to which the equipment is attached.

K) “Communications service provider” means a cable operator, as defined in 47 U.S.C. § 522(5), a provider of information services, as defined in 47 U.S.C. §153(24); or a provider of telecommunications service, as defined in 47 U.S.C. §153(53); or provider of fixed wireless or other wireless services as defined in 47 U.S.C. §332(c)(7)(C)(i).

L) “Day” means, for the purpose of calculation of the timing for review as provided in PMC 15.100.040, PMC 15.110.040, and 15.40.100, for consideration shall commence on the day following the receipt of the application or submission as evidenced by receipt stamp of the City. The review period day of calculation shall be based on ~~work~~ business days applicable both to the City and to the applicant, excluding legal holidays.

M) “Decorative pole” means a City, or City-regulated pole that is specifically designed and placed for aesthetic purposes.

N) “Deployables” means a portable, self-contained wireless facility that can be moved to a specified location or area and provides wireless services on a temporary or emergency basis such as a “cell on wheels” or “COW,” cell on light truck or “COLT,” tethered balloon, tethered drone or other unmanned device.

O) “Director” means the City Manager, or the City Manager’s designee.

P) “Discretionary review” means review of an application by the City relating to the review and issuance of a permit that is other than an administrative review. Discretionary review shall be pursuant to PMC 25.86 “Special Permits.”

Q) “Eligible facilities request” means a request for modifications of an existing tower or base station involving: colocation, removal, or replacement of transition equipment as set forth in 47 CFR §1.40001(b)(3), as may be amended from time to time.

R) “FCC” means the Federal Communications Commission of the United States.

S) “Fee” means a one-time, nonrecurring charge, whether a fixed amount or cost-based amount based on time and expense.

T) “Historic property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the United States Secretary of the Interior (in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R., Part 1, Appendix C), or listed on the Pasco Register of Historical Places pursuant to PMC Title 27.

U) “Joint location” means the location of small wireless facilities by multiple wireless providers upon or within a single pole, tower, or structure.

V) “Law” means and Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.

W) “Non-Authority pole” or “Non-City pole” means a pole not owned, regulated, managed, or operated by or on behalf of the City.

X) “Ordinary maintenance and replacement” means:

1) With respect to a communications facility and/or the associated support structure, pole or tower, inspections, testing, repair, and modifications that maintain functional capacity, aesthetic and/or structural integrity, and;

2) With respect to a communications facility only, the replacement or upgrade of antennas and/or other components of the communications facility (specifically, such as a swap-out or addition of 5G antennas and radio equipment as required by the applicant), with antennas and/or other components substantially similar in color, aggregate size, and other aesthetics to that previously permitted by the City (and/or consistent with the same height and volume limits for wireless facilities under this Chapter), so long as the support structure, pole, or tower will structurally support, or prior to installation will be modified to support, the structural load. Modifications are limited by the structural load analysis supplied by the applicant to the City, and by the volume limits as provided in subsection AG” “Small wireless facility” below. Modifications beyond the foregoing must be requested in writing by the applicant and are subject to the Special Use Permit process required by the City.

Y) “Permit” means a written authorization (in electronic or hard copy format) required by the City to perform an action or initiate, continue, or complete installation of a communications facility, or an associated support structure, pole, or tower.

Z) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

AA) “Pole” means a pole, such as a utility, lighting, traffic, or similar pole, not exceeding 50 feet in height above grade, made of wood, concrete, metal or other material located or to be located within the public right-of-way or a private easement. A pole does not include a tower or support structure.

AB) “Pre-approved facility location” means an existing permitted site with capacity for the location of additional small cell facilities within or upon the structure.

AC) “Private easement” means the area on, below, or above privately-owned property that has been designated for use as or is used for a utility purpose (such as for electric, cable or other utility purpose), and is typically recorded in the land records of ~~the City~~ Franklin County pursuant to a recorded plat, easement or right-of-way, and does not include any portion of a public right-of-way.

AD) “Public Right-of-Way” or “Public ROW” means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk or alley, however shall not include the Federal interstate highway (or other area not within the legal jurisdiction or maintenance responsibilities of the City), right-of-way or utility easements, or undeveloped rights-of-ways identified or scheduled for vacation by Ordinance or the current Comprehensive Plan.

AE) “Rate” means a recurring charge.

AF) “Replace” or “replacement” means, in connection with an existing pole, support structure or tower, to replace (or the replacement of) the same with a new structure, similar in design, size and scale to the existing structure and in conformance with current City codes and regulations in order to address limitations of, or change requirements applicable to, the existing structure to structurally support collocation of a communications facility. In connection with replacement of a pole or tower to support collocation of a wireless facility, similarity in size and scale shall be evaluated consistent with 47 C.F.R. 1.40001 Subpart b(7).

AG) “Small wireless facility” means a wireless facility that meets both of the following qualifications:

1) Each wireless provider’s antenna (including, without limitation, any strand-mounted antenna) could fit within an enclosure of no more than three (3) cubic feet in volume; and

2) All other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume.

3) The following types of associated, ancillary equipment are not included in the calculation of equipment, volume:

- (a) Electric meter.
- (b) Concealment elements;
- (c) Telecommunications demarcation box;
- (d) Grounding equipment;
- (e) Power transfer switch;
- (f) Cut-off switch; and
- (g) Vertical cable runs for connection of power and other services.

AH) “State” means the State of Washington.

AI) “Support Structure” means a building, a billboard, a water tank or any other structure to which a communications facility is or may be attached. Support structure does not include a pole or a tower.

AJ) “Target areas” means those specifically designated areas having historical value, expended significant public investment to promote development, requiring the placement of all utilities underground and developed in aesthetic design, or where added new structures in the right-of-way can present significant risks to vehicles, safety, and pedestrian access requiring a consistent aesthetic structure and unique neighborhood characters for which specific design standards shall be required for a consistent and compatible contribution to the character of the neighborhood. ~~of the City having unique neighborhood characteristics for which specific design standards shall be required for a consistent and compatible contribution to the character of the neighborhood. The target areas within the City shall constitute:~~

- ~~1) Downtown target area including that area west of west side of Tacoma Street; east of the west side of 10th Avenue; north of the south side of Columbia Street and south of the south side of Bonneville Street;~~
- ~~2) Court Street/Sylvester Streets west of the west side of 1st Avenue and east of the west side of Road 40;~~
- ~~3) 20th Avenue both side of Pearl Street and north of Lewis Street and also south of Lewis Street and north of “A” Street~~
- ~~4) 3rd Avenue both sides south of the roundabout and north of Columbia Street;~~
- ~~5) 4th Avenue both sides south of the SR 12 Overpass and north of “A” Street;~~
- ~~6) Lewis Street both sides west of 20th Avenue and east of the US 395 off-ramp; and~~
- ~~7) The I-182 corridor as defined in PMC 25.130.020.~~

The target areas are specifically designated in PMC 15.100.070.

AK) “Tolling” means the suspension of any required performance period, “shot clock” or time limitation required under this Title, or by agreement.

AL) “Tower” means any structure built for the sole or primary purpose of supporting a wireless facility, such as a self-supporting monopole, latticed, or a guyed tower. Tower, such as a self-supporting tower, a monopole, a lattice or a guyed tower. Tower also includes a structure designed to conceal from the general public the wireless facility. A tower does not include a pole or a support structure.

AM) “Wireless facility” means a communications facility installed and/or opened by a wireless provider. The term does not include:

- 1) The support structure, tower or pole on, under, or within which the equipment is located or collocated; or

2) Coaxial, fiber-optic or other cabling that is between communication facilities or poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

A small wireless facility is one example of a wireless facility.

AN) “Wireless infrastructure provider” means any person, including a person authorized to provide telecommunications service in the State, that builds or installs and/or operates wireless facilities or poles, towers or support structures on which wireless facilities are or are intended to be used for collocation, but that is not a wireless services provider.

AO) “Wireless provider” means a wireless infrastructure provider or a wireless services provider.

AP) “Wireless services” means personal wireless services as that term is defined in 47 U.S.C. §332(c)(7)(C)(i), fixed wireless and other wireless services.

AQ) “Wireless services provider” means a person who provides wireless services.

Section 2. This Ordinance shall take full force and effect five (5) days after its approval, passage and publication as required by law.

PASSED by the City Council of the City of Pasco, Washington, and approved as provided by law this ____ day of _____, 2019.

Matt Watkins, Mayor

ATTEST:

Angela Pashon, Interim City Clerk

APPROVED AS TO FORM:

Kerr Ferguson Law, PLLC, City Attorney